

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Juanita Harris,
Complainant,

v.

**ORDER REGARDING MOTION
TO COMPEL**

Jim Lupient Oldsmobile,
Jim Lupient and
Saturn of Golden Valley,
Respondents.

The above-entitled matter came on before Administrative Law Judge Barbara L. Neilson pursuant to Complainant's motion for an order compelling discovery. Oral argument was heard on October 29, 1996. A supplemental motion was filed on November 5, 1996, and the record closed on November 15, 1996, upon receipt of correspondence from the Respondents relating to the supplemental motion.

Christine L. Kelly, Attorney at Law, Horton and Associates, 4930 West 77th Street, Suite 210, Edina, Minnesota, 55435-4804, appeared on behalf of Juanita Harris ("Complainant").

Cynthia Gilbertson, Attorney at Law, Maslon, Edelman, Borman & Brand, 3300 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota, 55402-4140, appeared on behalf of Jim Lupient Oldsmobile, Jim Lupient, and Saturn of Golden Valley ("Respondents").

Based upon all of the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED:

1. That Complainant's motion to compel a response to Interrogatory No. 6 is granted with respect to Jim Lupient Oldsmobile ("JLO") and Jim Lupient but is limited to formal complaints, claims or charges of sexual discrimination, sexual harassment or reprisal discrimination brought to the attention of Jim Lupient or another JLO manager or officer in verbal or written form or filed with a local, state, or federal administrative agency or court between January 1, 1990, and the present against JLO, an employee or agent of JLO, or Jim Lupient. The motion to compel is also granted with respect to Saturn but is limited to formal complaints, claims, or charges of reprisal discrimination brought to the attention of a Saturn manager or officer in verbal or written form or filed

with a local, state, or federal administrative agency or court between January 1, 1995, and the present.

2. That Complainant's motion to compel a response to Interrogatory No. 9, regarding who among Respondents communicated or discussed the fact that Complainant filed or was planning to file suit, is granted but limited to Gary Lehman and Robert O'Toole of JLO and Rick Lupient and Mike Fahning of Saturn, and is further limited to the time period from August 1994 through March 1995.

3. That Complainant's motion to compel a response from Respondent JLO to Interrogatory No. 14 concerning wage information of JLO's Business Managers from 1994 to the present is granted. Complainant's request to compel information relating to their "history of opposition to discrimination" information is denied because it is too vague.

4. That Complainant's motion to compel production of personnel files encompassed within Document Request No. 3 is granted but limited to performance evaluations, information concerning disciplinary action, and any accusations of discriminatory conduct for the following individuals: Juanita Harris, Rebecca Stenson, John Berg, Peter Celatka, Pam Guilford, Lisa Jacobs, Gordon Johnson, Gary Lehman, James Lupient, Richard Lupient, Robert O'Toole, Robert Rose, Thomas Schmitz, Claudia Swedlund, Mary Swerdfiger, Sandy Tepley, Thomas Thacker, Henry Thomas, Mike Fahning, Thomas Cullen, all persons employed by JLO as Business Managers from January, 1986 to the present, all persons hired to replace Complainant at JLO, and all individuals who made, witnessed, or were named in charges of discrimination as set forth in response to Interrogatory 6.

5. That Respondents shall attempt to contact each of the above individuals by December 30, 1996, to determine whether the individual will consent to the release of the requested personnel information. In the event that one or more individuals consents to the release of their personnel information, copies of the information sought will immediately be provided to counsel for the Complainant. In the event that one or more of the above-named individuals cannot be reached or fails to give consent, the Respondents shall deliver a copy of the Notification attached hereto as Exhibit A to each individual's place of work or last known address by the end of the day on December 30, 1996.

6. That, after consideration of any objections received by January 6, 1997, the Administrative Law Judge will issue a determination concerning whether the requested personnel information shall be released. If the personnel information is ordered to be released, copies shall immediately be provided to counsel for the Complainant. Any personnel information released by consent of the individual or order of the Administrative Law Judge shall be stamped "CONFIDENTIAL" and shall be subject to the terms of the July 30, 1996, Protective Order issued in this matter.

7. That Complainant's motion to compel production of the complete personnel files of all persons hired as Billing Title Clerk at Saturn from 1995 to the

present in response to Document Request No. 3 is denied. However, Respondents shall provide to Complainant the identity of the persons hired as Billing Title Clerks during calendar year 1995; the identity of each Saturn employee who discussed the Billing Title Clerk position(s) with each individual who was considered for the 1995 position(s); the date on which the individuals hired as Billing Title Clerks at Saturn during 1995 first discussed the position with someone at Saturn; the date on which the Billing Title Clerks were hired; the identity of the person at Saturn who hired the Billing Title Clerks; and the qualifications of those hired as Billing Title Clerk.

8. That Complainant's motion to compel a response from Respondent Jim Lupient to Document Request No. 3 regarding all correspondence, internal memos and other documents that refer or relate to the Complainant is granted but limited to those documents from 1990 to the present which refer or relate to Complainant's work performance or any facts surrounding her complaints of discrimination, harassment or reprisal.

9. That Complainant's motion to compel a response from Respondent Saturn to Document Request No. 4 regarding all correspondence, internal memos and other documents regarding or referring to Complainant is granted.

10. That Complainant's motion to compel Document Request No. 5 regarding JLO's policy and procedure manuals is granted but limited to JLO's policy and procedure documents and manuals from 1990 - 1995.

11. That Respondents shall file supplemental responses to the above interrogatories and document requests by January 13, 1997. with the exception of any personnel file information that is the subject of an objection to the Administrative Law Judge under paragraphs 4-6 above.

12. That Complainant's motion for an award of attorney's fees is denied.

Dated this ____ day of December, 1996.

BARBARA L. NEILSON
Administrative Law Judge

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MEMORANDUM

Juanita Harris ("Complainant") has brought claims of sex discrimination, sexual harassment and reprisal discrimination pursuant to the Minnesota Human Rights Act against her former employer Jim Lupient Oldsmobile ("JLO"), Jim Lupient and Saturn of Golden Valley ("Saturn"). Complainant worked for JLO from March of 1986 until

December 29, 1994. Complainant claims that in March of 1994, while she was employed as a Business Manager for JLO, she began experiencing differential treatment from her new supervisor, Robert O'Toole. Complainant alleges that she complained about the discriminatory treatment to JLO's General Manager Gary Lehman in September of 1994 but no action was taken. In October of 1994, Complainant claims she was subjected to sexual harassment by Mr. Lehman. According to Complainant, on or about December 22, 1994, she informed JLO's attorney, James Provan, about the sexual harassment and discrimination. On December 29, 1994, Complainant was terminated. Complainant further alleges that, in January of 1995, she contacted Rick Lupient, Saturn's Business Manager and the son of Jim Lupient, about a billing clerk position at Saturn. Complainant maintains that she was offered the position, she accepted the offer, and she was told to start work on March 6, 1995. On or about February 24, 1995, Complainant filed a charge of discrimination against JLO with the Department of Human Rights. Shortly thereafter, Complainant alleges that Rick Lupient informed her that he would not employ her as a Billing Title Clerk with Saturn because she was suing JLO. The Complainant has filed a motion to compel responses to certain of the discovery requests she has propounded to the three Respondents.

Minn. R. 1400.6700, subp. 2 (1995), states that "[a]ny means of discovery available pursuant to the Rules of Civil Procedure of the District Court of Minnesota is allowed" in contested case proceedings. Rule 26.02(a) generally provides that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party" The rule further provides that "[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information appears reasonably calculated to lead to the discovery of admissible evidence." The definition of relevancy in the discovery context has been broadly construed to include any matter "that bears on or that reasonably could lead to other matter that could bear on any issue that is or may be in the case." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978). Information will be deemed relevant if there is any possible way that it relates to the subject matter of the action, and the definition of "relevancy" for discovery purposes is not limited by the definition of "relevancy" for evidentiary purposes. 2 D. Herr & R. Haydock, Minnesota Practice 9 (2d Ed. 1985), citing Detweiler Brothers v. John Graham & Co., 412 F. Supp. 416, 422 (E.D. Wash. 1976), and County of Ramsey v. S.M.F., 298 N.W.2d 40 (Minn. 1980).

The Complainant's motion to compel involves several interrogatories and requests for documents. Each of these requests is considered below.

Interrogatory No. 6

Complainant's Interrogatory No. 6 seeks information about each and every claim, complaint, charge or allegation of sexual discrimination, sexual harassment or reprisal discrimination which was ever brought against each of the Respondents or against any past or present employee, agent or officer of Respondents. Complainant maintains that information concerning prior incidents of discrimination is relevant to show that an atmosphere of condoned discrimination existed in the workplace at the Respondents,

the employer's knowledge of discrimination, and discriminatory animus. Respondents argue that the Complainant's interrogatory is overbroad in that it seeks any kind of "complaint" including informal verbal grousing to a co-worker, requires information relating to individuals who did not work with Complainant, and is not limited to any particular time period. Respondents assert that it is inappropriate for Complainant to seek the requested information from Saturn because it was not even in existence when Complainant's employment at JLO ended. Respondents further argue that this interrogatory is unduly burdensome because it would require Respondents to canvas each and every one of its employees in order to respond. During oral argument, Complainant indicated that it would be willing to limit the time period of the interrogatory to 1986 to the present.

Information relating to an employer's past policies and practices is relevant background evidence in discrimination cases. Hawkins v. Hennepin County Technical Center, 900 F.2d 153, 155-56 (8th Cir. 1990). Thus, it is appropriate to permit Complainant to discover information relating to past discrimination and retaliation claims. The Administrative Law Judge agrees with Respondents, however, that Complainant's attempt to compel information regarding any possible complaint of sex discrimination, sexual harassment or reprisal discrimination from 1986 to the present from all three Respondents is overbroad and unduly burdensome. Therefore, Complainant's motion to compel a response to Interrogatory No. 6 is granted with respect to JLO and Jim Lupient but is limited to information regarding formal complaints, claims or charges of sexual discrimination, sexual harassment or reprisal discrimination brought to the attention of Jim Lupient or another JLO manager or officer in verbal or written form or filed with a local, state, or federal administrative agency or court between January 1, 1990, and the present, against JLO, a JLO employee or agent, or Jim Lupient. Because Jim Lupient apparently is the owner of JLO, it is reasonable to require that he respond to the full interrogatory (as modified), even though Complainant's charge against him merely alleged that he aided and abetted Saturn in retaliating against her. Complainant's motion to compel an answer to this interrogatory from Saturn is also granted but is limited to formal complaints, claims, or charges of reprisal discrimination brought to the attention of a Saturn manager or officer in verbal or written form or filed with a local, state, or federal administrative agency or court between January 1, 1995, and the present. To the extent that Respondent has already responded to this interrogatory on behalf of Saturn, it need only reconfirm its assertion that no such complaints have ever been made against Saturn.

Interrogatory No. 9

Complainant's Interrogatory No. 9 directed to JLO, as modified by Complainant, seeks the identity of JLO officers, directors, employees or agents, including but not limited to Bob O'Toole or Gary Lehman, who between August, 1994, through March, 1995, communicated or discussed the fact that Complainant was planning to file or had filed a charge against JLO, and information regarding the date, time, location, witnesses to the communication, and statements made. Complainant maintains that she is entitled to this information because information relating to the discussion of her discrimination charge is relevant to the issue of retaliation. Complainant also contends that she limited the request by identifying in which employees' communications she was

most interested (O'Toole and Lehman). Respondents argue that, because this request is not limited to Messrs. O'Toole and Lehman, it would require Respondents to interview each and every officer, director, employee or agent of JLO and Saturn and identify to Complainant any persons who had ever discussed in any manner with anyone the fact that Complainant was planning to file or had filed a charge or lawsuit against JLO. Respondents further contend that what some uninvolved third-party told another third-party about Complainant's charge is irrelevant to the matter at hand. Respondents concede that what Rick Lupient or Saturn knew with respect to Complainant's charge of discrimination is relevant. However, Respondents maintain that they have fully answered the issue of Rick Lupient's knowledge in Saturn's response to Interrogatory No. 8.

The Administrative Law Judge agrees with Respondents that Complainant's Interrogatory No. 9 is overbroad. Therefore, with respect to JLO, Complainant's interrogatory No. 9 is granted but is limited to Gary Lehman and Robert O'Toole and to the time period from August 1994 through March 1995. As for Saturn, it appears that the only two persons with potentially relevant information are Rick Lupient and Mike Fahning. Respondent Saturn claims that it fully answered Complainant's Interrogatory No. 9 in its response to Interrogatory No. 8. In Saturn's response to Interrogatory No. 8, Saturn explained that Mike Fahning learned of Complainant's suit from Lisa Schneider, a manager at a different Lupient dealership. According to Respondent, Mr. Fahning "immediately shared this information with Mr. Lupient." However, this response does not address with whom Rick Lupient discussed Complainant's suit. Therefore, Complainant's motion to compel Saturn to respond to Interrogatory No. 9 is granted but is limited to Rick Lupient and Mike Fahning and, again, to the time period from August 1994 through March 1995.

Interrogatory No. 10

It is the understanding of the Administrative Law Judge that the parties agreed at the oral argument upon an acceptable approach to be taken regarding Interrogatory No. 10, and that that interrogatory is no longer at issue in this Motion to Compel.

Interrogatory No. 14

In Interrogatory No. 14, Complainant seeks identity, gender, wage, benefit and "history of opposition to discrimination" information for each of JLO's Business Managers from 1994 to the present. Respondent JLO provided only the identity, gender, dates of employment, and benefit information relating to each of its Business Managers. Respondent did not provide wage information and objected to the phrase "history of opposition to discrimination" as vague and unintelligible. In her supplemental motion, Complainant argues that the wage information is relevant to the issue of damages and should be provided. Complainant did not raise this argument in her original motion or at the hearing. Respondents argue that Complainant's failure to challenge the objection made by Respondents prior to the filing of her supplemental motion renders her challenge untimely. Minn. R. Civ. P. 33.01(c) provides that failure to serve notice of a hearing on objections to interrogatories within 15 days of service of the objections constitutes "a waiver of the right to require answers to each interrogatory to which objection has been made." Therefore, Respondents maintain that, because

Complainant failed to challenge their objection within 15 days, Complainant has waived her right to move to compel concerning this interrogatory. Respondents also argue that Complainant has not asserted that her wages were discriminatory so she does not need this information for comparison purposes. According to Respondents, Complainant can establish her damages in some less intrusive way.

The amount of wages received by JLO's other Business Managers is generally relevant to Complainant's discrimination claim and to Complainant's claim for damages. It is true that, pursuant to Minn. Rule Civ. P. 33.01(c), a party waives her right to require answers to interrogatories to which objections have been made unless the party notices a hearing on the objections within 15 days of service of the objections. However, Minn. R. 1400.6700, subp. 2, which governs contested case proceedings before the OAH, merely provides that a party may bring a motion before the Judge to obtain an order compelling discovery if the party from whom discovery is sought objects to the discovery. Under this rule, the bringing of such a motion is discretionary and there is no mandatory notice requirement or waiver provision. Moreover, hearings are not always held with respect to motions to compel filed in contested case proceedings, and requests to schedule hearings on such motions in advance of the filing of the motion papers are typically denied pending review by the Administrative Law Judge of the matter and a determination regarding whether oral argument will be helpful. Complainant did, in fact, bring a motion to compel discovery as required by Minn. R. 1400.6700 and she requested in her supplemental memorandum that Respondent JLO provide the wage information to which the Respondents had objected in Interrogatory No. 14. The Administrative Law Judge finds that Complainant has substantially complied with Minn. R. 1400.6700 and that it would be inappropriate to strictly apply Minn. R. Civ. P. 33.01(c) in this proceeding.

The Administrative Law Judge further finds that the information sought by Complainant regarding the wages of the other Business Managers of JLO is relevant to both Complainant's claim of discrimination and claim for damages. Therefore, Complainant's motion to compel information regarding the wages of JLO's Business Managers is granted. However, Respondent is correct in maintaining that Complainant's request for "history of opposition to discrimination" information is too vague. Accordingly, Complainant's motion to compel "history of opposition to discrimination" information regarding JLO's Business Managers is denied.

Document Request No. 3

Complainant's Document Request No. 3 seeks the complete personnel files (resumes, applications, performance reviews, disciplinary notices, correspondence, grievance records, internal memos, and exit interviews) of Complainant, Jim Lupient, Rick Lupient, Mike Fahning, fifteen specified individuals, persons identified by JLO and Saturn as having knowledge of the facts pertaining to the case (Thomas Cullen and James Proman), all individuals employed by Saturn as a Billing Title Clerk from 1986 to present, all business managers employed by JLO from 1986 to the present, all individuals hired to replace Complainant at JLO, and all individuals who made charges of discrimination, were present when such charges were made, or were named in the charges. Complainant argues that the requested personnel files of JLO and Saturn

employees may contain memoranda or other records of performance problems which may reflect on their credibility. In addition, the files could contain records of similar complaints of discrimination and the action taken by Respondent in response thereto. According to Complainant, such information is relevant for credibility and comparison purposes. Respondents argue that Complainant is going on a fishing expedition and that the personnel files requested are private and should not be produced.

Current and former employees have a privacy interest in their personnel files. See, e.g., Fraternal Order of Police, Lodge 5 v. Philadelphia, 812 F.2d 105, 113, 115 (3d Cir. 1987) (medical and financial information); In the Matter of Agerter, 353 N.W.2d 908, 914 (Minn. 1984) (informational privacy, including sexual activities). However, personnel files are discoverable in appropriate cases. See, e.g., Weahkee v. Norton, 621 F.2d 1080, 1082 (10th Cir. 1980) (plaintiff alleging discrimination can discover personnel files of those promoted or hired instead); Dixon v. Sanderson, 728 S.W.2d 878, 880 (Tex. Civ. App. 1987) (personnel files of persons promoted over plaintiff may be discovered); DeLoitte, Haskins & Sells v. Green, 370 S.E.2d 194, 196 (Ga. App. 1988) (personnel files of negligent employees may be discovered); Willis v. Golden Rule Insurance Co., 56 Fair Empl. Prac. Cas. (BNA) 1451 (E.D. Tenn. 1991) (personnel files may be discovered in an age bias case).

In determining whether personnel files or any specific information contained in them should be disclosed, it is generally held that a balancing approach must be used. In United States v. Westinghouse Electric Corp., 638 F.2d 570 (3d Cir. 1980), the Court explained that it is appropriate in deciding whether an intrusion into an individual's privacy is justified to consider "the type of record requested, the information it does or might contain, the potential for harm in any subsequent nonconsensual disclosure, the injury from disclosure to the relationship in which the record was generated, the adequacy of safeguards to prevent unauthorized disclosure, the degree of need for access, and whether there is an express statutory mandate, articulated public policy, or other recognizable public interest militating toward access." 638 F.2d at 578. Likewise, in In the Matter of Agerter, the court explained that an individual's protectable right of informational privacy depends on "a balancing of the competing interests of the individual in keeping his or her intimate affairs private and the government's interest in knowing what those affairs are when the public concerns are involved." 353 N.W.2d at 913.

Complainant agreed at oral argument to limit her request for personnel files to the release of performance evaluations and information concerning disciplinary action and accusations of discriminatory conduct. In addition, with respect to the personnel files of all persons employed as Billing Title Clerk at Saturn, Complainant agreed to limit her request to the identity of the persons hired as Billing Title Clerk; the identity of each Saturn employee who discussed the Billing Title Clerk position with those individuals hired as Billing Title Clerks; the date on which those hired as Billing Title Clerks at Saturn first discussed the position with someone at Saturn; the date on which the Billing Title Clerks were hired; the identity of the person at Saturn who hired the Billing Title Clerks; and the qualifications of those hired.

The Administrative Law Judge finds that the personnel information sought by Complainant may contain information relevant to her case or information reasonably calculated to lead to the production of relevant, admissible evidence. In particular, the personnel information sought by Complainant may provide Complainant with comparative information concerning the performance, disciplinary history and possible accusations of discrimination of other JLO employees. In addition, action taken by Respondents in response to any other performance problems or complaints of discrimination may reflect on Respondents' credibility as well as Complainant's allegation of discriminatory treatment. However, the Judge agrees with the Respondents that the wholesale production of personnel files as initially requested by Complainant is overbroad and may result in the disclosure of confidential or sensitive information that has no bearing on this proceeding.

Therefore, the Administrative Law Judge determines that it is appropriate to require the Respondents to seek consent and provide written notice to its employees prior to the disclosure of information from their personnel files. Accordingly, this Order includes a requirement that the Respondents contact the individual employees to determine if they consent to the release of their performance evaluations and disciplinary history and that those who do not consent receive formal notification of the proposed release of the records and an opportunity to object to the release. Respondents are required to deliver the notification to the last-known address of each individual in question or, to the extent that the individual is still employed by Respondents, to give them such notification at their work location by the end of the day on December 30, 1996. An expedited period is established during which these individuals may notify the Administrative Law Judge of any objection they may have to the release of their personnel information.

After the deadline for the receipt of such objections, the Judge will (1) issue an order releasing any personnel information that has not been the subject of an objection and (2) conduct an in camera inspection of any personnel information that has been the subject of an objection and issue a ruling regarding whether the documents will be released. If the documents are released, counsel for the Complainant will be provided with copies of the personnel information.

Document Requests Nos. 3-4

In Document Requests No. 3 (directed to Respondent Jim Lupient) and Document Request No. 4 (directed to Respondent Saturn), Complainant seeks any and all documents generated or received by Jim Lupient or an employee of Saturn which "refer or relate to Complainant, her work performance, or any of the facts surrounding her complaints of discrimination. . . ." Respondents object to this request as unduly burdensome and overly broad. Complainant argues that she is seeking only those documents in Mr. Lupient's possession at either his office or home and not those generally maintained at the JLO premises. In addition, Complainant contends that since she never actually worked for Saturn, Saturn should not have many documents relating to her. Therefore, Complainant maintains that her request to Saturn for any documents which refer to her cannot be unduly burdensome.

The Administrative Law Judge agrees with Respondent that Complainant's request for documents which refer to her is overbroad with respect to Mr. Lupient. Complainant worked for him for several years, and her name could conceivably appear on hundreds of documents, including sales contracts which have no bearing on this case. Therefore, with respect to Jim Lupient, Complainant's Document Request No. 3 is granted but limited to those documents issued between January 1, 1990, and the present which refer or relate to Complainant's work performance or any of the facts surrounding her complaints of discrimination, harassment or reprisal. However, the Judge finds that Complainant's similar request to Saturn is not overbroad or unduly burdensome. Saturn apparently only began operating in 1995. Because Complainant never worked there, Saturn should have few, if any, documents relating to Complainant. Any documents that Saturn might have regarding Complainant would appear to be relevant to the issues in this case or, at a minimum, could lead to the discovery of admissible evidence. Accordingly, Complainant's motion to compel Document Request No. 4 is granted with respect to Saturn.

Document Request No. 5

In Document Request No. 5, Complainant seeks all documents relating to Respondents' policies and procedures from 1986 to 1995. Respondents have produced policy documents from 1992 to present, but refuse to provide any documents prior to 1992. Respondents maintain that Complainant's request is overbroad and argue that obsolete policy manuals will not lead to the discovery of admissible evidence. Complainant argues that she is entitled to discover policy manuals in effect during the course and scope of her employment. Complainant contends that inquiring into why policies changed may lead to information regarding animus held by Respondents. Respondents contend that whether Complainant believes the prior policies were more or less favorable is irrelevant. All that is relevant is the policies in effect at the time of Complainant's termination. Furthermore, Respondents contend that Complainant has waived her right to object to the Respondents' response due to her failure to raise this argument in her first memorandum or at the hearing pursuant to Minn. Rules Civ. P. 33.01(c).

As discussed above, the Administrative Law Judge finds that Complainant has sufficiently complied with Minn. R. 1400.6700, subp. 2, in bringing her motion to compel Respondent's policy manuals. The Administrative Law Judge further finds that it would not be unduly burdensome for Respondent JLO to produce the manuals and that such documents may lead to admissible evidence. However, the Administrative Law Judge agrees with Respondents that Complainant's request to go back to 1986 for policy documents is overbroad. Therefore, Complainant's motion to compel production of Respondent's policy and procedure documents and manuals is granted but limited to 1990 to the present.

Attorney's Fees

Finally, Complainant has requested attorney's fees for bringing this motion to compel pursuant to Minn. Rules Civ. P. 37.01(d). Rule 37.01(d) provides that a court should award "the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially

justified or that other circumstances make an award of expenses unjust.” Complainant maintains that Respondents’ objections were unwarranted and caused Complainant unnecessary expense in bringing this motion. The Administrative Law Judge finds that Respondents’ opposition to Complainant’s motion to compel was substantially justified and founded in good faith. Therefore, Complainant’s motion for an award of attorney’s fees is denied.

B.L.N.

* Complainant originally listed nineteen individuals. This list included Rick and Jim Lupient and several business managers and salespersons. At oral argument, she voluntarily withdrew her request for the personnel files of two of these individuals, Duane Hibben and Rick Wallace. Complainant’s request for production of the personnel file of James Provan has been denied because he is not an employee of any of the Respondents.